

REMARKS

Reconsideration and withdrawal of the examiner's objections under 35 U.S.C. §103(a) is respectfully requested in view of the following remarks.

35 USC §103

The examiner has rejected claims 1-5, 7-11, 13-19, 22 and 25-29 under 35 U.S.C. 103(a) as being unpatentable over Rath, et al., (US 5,972,322, of record), in view of Stewart (WO 98/30189, of record). The examiner asserts the following:

Rath teaches that hair care products are available as prepared formulations. "A drawback of such products is that the user cannot alter the formulation to accommodate their particular hair characteristics or to provide specialized treatment." Col. 1, lines 11-14. Rath "provide[s] a system which enables a user to formulate a variety of shampoos, hair conditioners or styling compositions to best suit the hair care needs of the user." Col. 1, lines 22-25.

More specifically, Rath discloses "a system for formulating customized hair care products, such as hair shampoo, conditioner, and styling compositions. The hair care system is composed of separately packaged components, including a low-viscosity aqueous base composition, a compatible thickening composition and, optionally, one or more enhancing additives." Col. 2, lines 48-54.

"Examples of suitable enhancing additives include a shine enhancer, oil-based moisturizer, herbal additive, hair strengthener, vitamin additive, colorant, body building and conditioning polymers, natural or synthetic fragrance oils (aroma), UV absorbers, and dandruff control compounds." Col. 9, lines 30-35. Rath teaches exemplary compositions for a "stimulating or astringent herbal additive" and a "soothing herbal additive" (columns 19-20), both compositions have vehicles with at least two ingredients in common. Rath also teaches exemplary color concentrate compositions (columns 20 through 23), all of the compositions have vehicles with at least two ingredients in Common.

Rath teaches that the base, thickener, and additive components are provided separately, together with instructions (col. 13, lines 31-35). "The instructions can provide one or more formulations of the components, including combinations of the base with the thickener and desired enhancing additives, to achieve a desired shampoo, conditioner or styling composition." Col. 13, lines 36-60. "(T)he base ... is combined with the desired enhancing additives. The ingredients are typically mixed together by vigorous shaking ... A predetermined amount of thickener is then added to the low viscosity mixture, (and) the mixture is vigorously shaken to provide a homogeneous mixture." Col. 13, lines 53-60.

For a composition containing a solvent, a solubilizing agent and a preservative, see the conditioner base disclosed as col. 5, line 44 to col. 6, line 8. For polyethylene glycol ethers of fatty alcohols and polysorbates as solubilizing agents see col. 5, lines 60-67. For the viscosity of the base compositions within the instantly claimed viscosity ranges see col. 3, lines 3-4, col. 5, lines 36-37, and col. 7, lines 58-59. For DMDM hydration and polyaminocarboxylic acid chelates (EDTA), see col. 13, lines 45-58, 66-67, Examples 9, 13, 14 and tables 16-21 at col. 17-23. The final composition may be prepared as a hair salon (at retail location) see col. 2, lines 34-36. The composition is packaged in containers (col. 13, lines 31-34). Rath also teaches various composition containing various performance agents in varying amounts. See col. 4, lines 28-30 and col. 9, lines 26 to col. 13, line 5. Varying the amounts of the active agents is considered equivalent to provide a plurality of intensity levels as herein claimed. Several additional types of performance agents are disclosed. See particularly examples 8-15.

Rath does not teach expressly that the vehicles of each performance agent have at least two or three ingredients in common, a blank composition, a label identifying the components of the formulation, that the fragrance contain a solvent and at least one preservative in common, a label with code, a machine scannable bar code, the volume of the container, or the angle of the container's major axis during agitation.

The examiner further asserts that it would have been prima facie obvious to a person of ordinary skill in the art, at the time the claimed invention was made, to employ the same vehicles (such as solvent, preservative, etc.) for each of the performance agents (e.g., colorant, fragrance) since Rath teaches that each of the composition may contain the same components such as water, alcohols and preservatives. Rath would have made obvious to a person of ordinary skill in the art a hair care system comprising a plurality of base compositions (e.g.,

shampoo base and conditioner base), a thickener, and a plurality of performance agents selected from at least two classes of performance agents (e.g., the two herbal additive compositions in columns 19-20 and two or more of the color concentrates in columns 20-23). According to Rath's disclosure, the user would select the desired additives, such as fragrance, colorant, vitamins, etc., combine them with the appropriate base (shampoo base for making shampoo, conditioner base for making conditioner) and mix, then add thickener and mix again. The system and method made obvious by Rath meets all of the limitations of instant claim 1.

The examiner further asserts that Stewart teaches a system and a method of preparing a customized, point-of-sale cosmetic composition. The method provide a base composition, and at least one of additives, each additive comprise plurality of variants. Commonly used additives include pH adjusters, oils, drying agents, anti-dandruff agents, salts, colors, fragrances moisturizers, gloss agents, etc. See particularly the abstract, pages 22-25, and the claims.

It is within the skill of artisan to add an inert solvent or diluents to a cosmetic composition to dilute the composition in order to achieve the desired strength or level activity of the composition. Therefore, absent evidence of unexpected results, the addition of a blank composition having common ingredients with the performance agents is not considered critical. The volume of the container is not considered critical to the invention absent evidence to the contrary because it is within the skill of the artisan to select a container capable of holding an appropriate amount of composition. It is within the skill of artisan to adjust the angle of container during agitation to achieve the desired mixing, absent evidence to the contrary.

The examiner further asserts that it also would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to employ more than one variable performance agents, including fragrance, colors or benefit agents such as vitamins, antidandruff agent, in a customized composition as suggested by Stewart.

The negative limitation excluding thickener from the "performance agents" fails to distinct the claimed invention from the method suggested by Rath. As indicated by the Board, "Even if Rath's thickener is considered a part of the base and not an enhancing additive, the method suggested by Rath meets all of the limitations of instant claim 1." Particularly, Rath suggest a method of making shampoo or conditioner composition by mixing a base composition

with additional active agents (or performance agents) such as fragrance, colorant, vitamin, herbal extract, etc.

The examiner has rejected claims 6, 20 and 21 under 35 U.S.C. 103(a) as being unpatentable over Rath, et al., (US 5,972,322 of record), in view of Stewart (WO 98/30189, of record) for reasons set forth above, and in further view of Rigg, et al. (US 5,622,692, of record). The examiner asserts the following:

Rath, et al., and Stewart as whole do not teach expressly the bar code in the containers.

However, Rigg, et al., teaches providing a customized cosmetic composition in a container having a bar code label for identifying the customized composition. See particularly col. 2, lines 55-67, col. 4, lines 16-63.

Therefore, it would have been prima facie obvious to one of ordinary skill in the art at the time of the invention was made to prepare the composition of Rath using similar vehicle in a container with a bar code label as taught by Rigg, et al., with the reasonable expectation of obtaining compatibility of the separate components for specialized treatment composition that can be identified for future use.

The examiner has rejected claims 23 and 24 under 35 U.S.C. 103(a) as being unpatentable over Rath, et al., (US 5,972,322 of record) in view of Rigg, et al. (US 5,22,692 of record) and Stewart (WO 98/30189) and in further view of Tartaglione (US 4,851,062 of record). The examiner asserts the following:

Rath, et al., Rigg, et al. and Stewart teaches or suggests all the limitation of the claims as stated above. They do not teach expressly a container with a neck, a plug inserted in the neck and a cap, or container with a neck and a cap without an orifice.

However, Tartaglione teaches a container for packaging cosmetic composition that has a neck and a cap wherein the neck may be closed with a plug. See the abstract, column 1, lines 10-14, column 3, lines 39-41, 50-65 and column 4, lines 30-35.

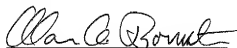
Therefore, it would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to provide the composition as suggested by Rath, et al., Rigg, et al., and Stewart in a container with a plug and a cap as taught by Tartaglione expecting to provide cosmetic composition in containers with safety closure for preventing contamination of the contents. Applicants respectfully traverse these rejections.

Applicants respectfully assert that the claim amendment adding the negative limitation "wherein said first and second class of performance agents do not include a thickener component other than component(s) selected from botanical extracts, emollients, vegetable oils, active agents for treating or preventing skin disorders, vitamins, fragrances and colorants," clearly distinguish the claimed invention from the prior art of record as none of the prior art of record suggest the instant invention as presently claimed including the negative limitation of a thickener component absent impermissible hindsight of applicant's invention.

CONCLUSION

In light of the above remarks, applicants submit that all claims now pending in the present application are in condition for allowance. Reconsideration and allowance of the application is respectfully requested. The examiner is invited to contact the undersigned if there are any questions concerning the case.

Respectfully submitted,



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